

General Information Letter: Partners include in net income their partnership share of the business income of the partnership as apportioned to Illinois by the partnership using its apportionment factors.

April 22, 1999

Dear:

This letter supplements our April 5, 1999 response to your letter dated January 5, 1999, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you stated that:

Limited Partnership is a Delaware limited partnership that will invest, hold and trade in corporate securities and other equity positions for a limited number of investors.

You requested confirmation that, assuming that Limited Partnership has no net income allocable or apportionable to Illinois:

the partners of the Limited Partnership who otherwise are not subject to Illinois tax (that is, those who are nonresidents of Illinois or those who are persons other than residents that do not derive income from Illinois and are not engaged in a unitary business with the Limited Partnership) will not be subject to Illinois income tax or Illinois replacement tax on their shares of Limited Partnership income.

In our letter of April 5, 1999, we failed to respond to this request.

### **Response**

Section 305 of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides:

(a) Allocation of partnership business income by partners other than residents. The respective shares of partners other than residents in so much of the business income of the partnership as is allocated or apportioned to this State in the possession of the partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State.

(b) Allocation of partnership nonbusiness income by partners other than residents. The respective shares of partners other than residents in the items of partnership income and deduction not taken into account in computing the business income of a partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year, and allocated as if such items had been paid, incurred or accrued directly to such partners in their separate capacities.

Section 303(b)(3) of the IITA provides that, in the case of nonbusiness income:

Capital gains and losses from sales or exchanges of intangible personal property are allocable to this State if the taxpayer had its commercial domicile in this State at the time of such sale or exchange.

Section 301(c)(2) of the IITA provides that:

Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 (including, without limitation, interest, dividends, items of income taken into account under the provisions of Sections 401 through 425 of the Internal Revenue Code, and benefit payments received by a beneficiary of a supplemental unemployment benefit trust which is referred to in Section 501(c)(17) of the Internal Revenue Code):

(A) in the case of an individual or estate, shall not be allocated to this State; and

(B) in the case of a corporation, trust or a partnership, shall be allocated to this State if the taxpayer had its commercial domicile in this State at the time such item was paid, incurred or accrued.

Pursuant to Section 305(a) of the IITA, no business income of a partnership that is not apportionable to Illinois by the partnership will be apportioned to Illinois by a partner in that partnership. The one exception to this rule is contained in 86 Ill. Admin. Code § 100.3380(c), which provides a special rule applicable only to a corporate partner that is engaged in a unitary business with the partnership. That rule has no relevance to partners who are not engaged in a unitary business with the partnership.

In the case of nonbusiness income of a partnership, Section 305(b) of the IITA provides that the income will be allocated by the partners as if they had received the income directly. In the case of capital gains from the sale or exchange of equity securities, Section 303(b)(3) provides that the income cannot be allocated to this State unless the partner's commercial domicile is in this State. Similarly, in the case of dividends and interest, Section 301(c)(2) provides that the income cannot be allocated to this State except where the partner's commercial domicile is in this State.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton  
Associate Chief Counsel -- Income Tax